



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

ISCR Case No. 09-00801

Applicant for Security Clearance

**Appearances**

For Government: Ray T. Blank, Esquire, Department Counsel  
For Applicant: *Pro Se*

November 17, 2009

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on October 2, 2008, as part of his employment with a defense contractor. On April 24, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F, and personal conduct under Guideline E. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006. Since Applicant was serving overseas when the SOR was issued, he did not acknowledge receipt of the SOR until June 2, 2009.

Applicant answered the SOR in writing on June 3, 2009. He denied all allegations under both Guideline E and Guideline F. Applicant did not request a hearing. On July 1, 2009, Department Counsel requested a hearing (Hearing Exhibit 1). The case was assigned to me on July 24, 2009. DOHA issued a Notice of Hearing on August 13,

2009, for a hearing on September 3, 2009. Applicant signed for the Notice of Hearing on August 24, 2009. I convened the hearing as scheduled. Department Counsel offered five exhibits, marked Government Exhibits (Gov. Ex.) 1 through 5, which were received without objection. Applicant testified on his behalf. The record was held open for Applicant to submit documents in support of his position. Applicant timely submitted three documents, marked App. Ex. A through C. Department Counsel had no objection to admission of the documents (Gov. Ex. 6). The documents were admitted into the record. DOHA received the transcript of the hearing (Tr.) on September 10, 2009. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Procedural Issues**

Applicant signed for the Notice of Hearing on August 24, 2009. Applicant is entitled to 15 days notice of hearing (Directive E3.1.8). Applicant discussed with Department Counsel the hearing date of September 3, 2009, prior to the mailing of the Notice of Hearing. Accordingly, actual notice was given more than 15 days prior to the hearing. However, Applicant signed for the Notice of Hearing only 11 days prior to the hearing. He waived the 15 days notice requirement (Tr. 6).

Department Counsel moved to amend the SOR at hearing to add an additional allegation under Guideline E for falsification of his e-QIP by failing to note a truck repossession in the last seven years. The motion was denied since Department Counsel had adequate time to amend the SOR before the hearing and he had not notified Applicant prior to the hearing of the intended amendment to the SOR (Tr. 11-12).

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 42-year-old field service representative mechanic working on military vehicles for a defense contractor since September 2008. Prior to working for the defense contractor, Applicant was a self-employed truck driver and an automobile mechanic. He is married with three children, two still at home. Applicant is presently receiving workman's compensation of \$4,800 monthly. His wife is also employed and contributes about \$1,600 monthly to the family income, for a total monthly income of approximately \$6,400. Their monthly expenses are about \$5,700, leaving about \$700 to \$800 in monthly discretionary funds (Tr. 33-34, 43-44; Gov. Ex. 1, e-QIP, dated October 2, 2008).

Credit reports and Applicant's admission show a charged off debt for a truck repossession of \$14,402 (SOR 1.a). His personal financial statement provided to security investigators on March 16, 2009, showed a monthly negative remainder of

funds after expenses of \$202 (SOR 1.b; Gov. 4, Credit report, dated March 3, 2009; Gov. Ex. 5, Credit report, dated October 15, 2008).

In early 2008, Applicant believed he could enter the business of transporting cars to and from car auctions for local automobile dealers. He had heard from others that the business would be profitable. Applicant had worked for many years as an automobile mechanic and knew a number of people in the automobile industry in the area. He believed he would have sufficient business to make a profit. Applicant did not present any information to show he conducted a meaningful evaluation of the profitability of this type of business. Applicant purchased a truck for \$40,000 in February 2008. Within a short time, the price of fuel increased and Applicant realized he could not make a profit in the business. Applicant's last payment on the truck was in April 2008. In May 2008, Applicant voluntarily returned the truck to the dealer prior to the due date for his monthly payment. Applicant still owed over \$35,000 for the truck. The truck was sold at auction for \$21,000 leaving Applicant still owing the creditor \$14,402 (Tr. 26-27; 44-47).

Applicant did not immediately receive information from the creditor about the auction of the truck or the amount he may still owe on the truck loan. He started working for the defense contractor in September 2008, and completed his security clearance application in October 2008. He was sent to Iraq by his employer to work on military vehicles in December 2008. Shortly after arrival in Iraq, Applicant learned from his wife that the creditor had advised them of the auction price received for the truck and the debt still owed of \$14,402. Applicant knew he would have a debt from the auction of the truck. However, since the truck had less than 2,000 miles on it, he thought the truck sale would be for at least \$30,000, leaving him with a debt of about \$5,000 (Tr. 42-50).

Applicant was injured on the job in Iraq in March 2009 and returned home to the United States. He is receiving workman's compensation for that injury. After returning home, Applicant contacted the creditor on the truck loan in May 2009 to seek an agreement for payment of the debt. The creditor offered a lump sum payment option of \$9,000 that Applicant was unable to pay. He offered to pay \$100 per month until the debt was satisfied. The creditor rejected the offer. Applicant sent a \$100 payment to the creditor after the hearing in September 2009 (Tr. 32-34, 38-39, 56-57; App. Ex. A, Applicant's letter, undated; App. Ex. B, Money order receipt, dated September 14, 2009; App. Ex. C, Settlement notice, dated September 8, 2009).

Applicant completed a personal financial statement in response to interrogatories on March 16, 2009. He had just returned from Iraq after being injured. His pay has been reduced from what he earned in Iraq. He listed his net monthly salary as \$3,244 with monthly expenses of \$3,446, leaving a negative monthly remainder of \$202. He did not list any income for his wife. Shortly after completing the financial statement, Applicant started drawing unemployment and his income increased. His wife is also employed and contributes to the family income. He now has a net remainder of a positive \$700 to \$800 (Tr. 32-33, 43-44; Gov. Ex. 2, Answers to Interrogatories, dated March 16, 2009).

In 1989, Applicant was convicted and sentenced for obtaining property by false pretense (SOR 2.a; Gov. Ex. 3, Federal Bureau of Investigation Criminal Justice Report). Applicant responded "NO" to question 28(a) on his October 2008 security clearance application asking if he had debts more than 180 days past due in the last seven years, and question 28(b) asking if he had any present debts more than 90 days past due (SOR 2.b; Gov. Ex. 4, Credit report, dated March 3, 2009; Gov. Ex. 5, Credit report, dated October 15, 2008).

Applicant worked for an automobile dealer and repair business in 1989. Part of his job was to purchase parts needed to repair cars at his employer's business using an open account with the parts distributors. Applicant admitted using the open account to purchase automobile parts not intended for his use by his employer. He was sentenced to a year confinement, which was suspended, and a \$2,000 fine. He paid the fine and completed the period of suspension. He has no other criminal charges or actions (Tr. 55-56).

Applicant did not list the truck repossession on the e-QIP because he believed that his truck had not been repossessed since he turned it in voluntarily. After he returned the truck to the dealer/creditor, Applicant knew he may owe some money on the truck if the sale of the truck did not cover the amount owed. At the time he completed the e-QIP in October 2008, he did not know if he owed money on the truck or how much. He did not know he had a debt more than 180 days past due or presently more than 90 days past due. Since the truck was repossessed in May 2008 and he completed the security clearance application in October 2008, 180 days had not passed so he could not have been delinquent on a loan for more than 180 days.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are still required in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Financial Considerations**

Under financial considerations, failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent strong evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent debt from a loan for a truck as listed on credit reports and admitted by Applicant is a security concern raising Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). Applicant completed a personal financial statement shortly after returning early from Iraq because of an injury. His pay was reduced, and he had not had time to adjust his expenses to his

new lower income. He also did not include his wife's salary on the financial history. Applicant demonstrated that his pay has increased since he is now receiving workman's compensation and his wife contributes to the family income. He has a net positive remainder each month. His present personal finances do not have a negative monthly remainder. Applicant's present income and expense ratio are not now a security concern.

I considered the Financial Considerations Mitigating Conditions (FC MC) raised by Applicant's testimony. FC MC AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) does not apply. Applicant has an outstanding debt of \$14,402 on a truck loan. The debt arose in May 2008 and has not been paid. It arose because Applicant's business venture did not provide the income he anticipated and his expenses were more than anticipated.

I considered FC MC ¶ 20(b) (the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances). Applicant purchased a truck to enter a new line of business to haul cars to and from auctions. Within two months, he realized that the business would not be profitable. Part of the reason was the increase in fuel prices. Applicant entered the new business without carefully analysis of what it would take to make the business profitable. He relied on the word from others that it was a profitable business venture. The fact that he had to return the truck within two months shows he did not carefully evaluate the business prospects. He entered the business without a solid business plan. He did not act responsibly under the circumstances.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Evidence of past irresponsibility is not mitigated by payment of debt only under pressure of qualifying for a security clearance. Applicant made one payment to the creditor in September 2009 after the hearing. He does not have a verifiable plan to pay his delinquent debt. One payment after the hearing is not evidence of a good-faith effort to resolve the debt. Applicant has not mitigated security concerns based on his finances.

## **Personal Conduct**

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect

classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process (AG ¶ 15). Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be entrusted to properly safeguard classified information. The security clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. Appellant's incorrect answers to questions on his security clearance application concerning finances and truck repossession raise a security concern under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) (the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness).

Appellant denied intentional falsification. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance, every omission, concealment, or inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. Appellant did not believe that when he voluntarily returned the truck to the dealer/creditor that it was considered repossession. At the time that he completed the security clearance application, he did not know that the truck had not sold for enough to cover the remainder on the loan. At best, he thought he may owe a few thousand dollars. The creditor may have noted for the credit reporting agencies that a debt was owed as early as May 2008, but they did not notify Applicant until December 2008. He did not receive information from the creditor of the amount owed until after he completed the security clearance applicant. Appellant honestly and reasonably believed the truck was not repossessed, and he did not have other debts more than 180 days or 90 days past due. His answers to the questions were not deliberately false because of his honest and reasonable belief and his lack of information on the debt. Accordingly, his wrong answers were not a deliberate intent to deceive.

Applicant's conviction in 1989 for Obtaining Property by False Pretense raises PC DC AG 16(c) (credible adverse information in several adjudicative issue area that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information).

Appellant has raised by his testimony Personal Conduct Mitigating Condition (PC MC) AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment). The offense happened in 1989, over 20 years ago. Applicant completed the

sentence of a suspended jail term and paid a fine. He has not been involved in any other criminal or adverse conduct since that time. The passage of time and lack of other adverse conduct shows that the actions are not likely to recur. These factors also show that his conduct in 1989 does not now impact on his reliability, trustworthiness or good judgment. Applicant has mitigated security concerns for personal conduct.

### **Whole Person Analysis**

Under the whole person concept, the Administrative Judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's willingness to serve the country in Iraq, and the fact he was injured while working there.

Applicant must establish a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. He is not required, as a matter of law, to establish that he paid the debt listed in the SOR. All that is required is that he has a plan to resolve his financial problems and takes significant action to implement that plan. The entirety of his financial situation and his actions can reasonably be considered in evaluating the extent to which his plan to reduce his outstanding indebtedness is credible and realistic. Available, reliable information about the person's behavior, past and present, favorable and unfavorable, should be considered in reaching a determination.

Applicant has not established a meaningful track record of debt payment. Applicant knew of the debt in January 2009 when he was in Iraq making a good salary. He left Iraq in March 2009 after being injured. He suffered a loss of pay for a short time until he started receiving workman's compensation. He contacted the creditor in May 2009, but he made only one payments of \$100 after the hearing in September 2009. His lack of action on the debt until recently is not a good-faith effort to resolve the debt.



Applicant has not demonstrated a credible and realistic plan to manage his debt under the circumstances. The inability or unwillingness to establish a concrete plan to resolve his financial issues indicates he will not be concerned, responsible, and careful in regard to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, and trustworthiness. He has not established he is suitable for a security clearance. I conclude Appellant has not mitigated the security concerns arising from his financial situation. He has mitigated security concerns for personal conduct.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

|                           |                   |
|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a:         | Against Applicant |
| Subparagraph 1.b:         | For Applicant     |
| Paragraph 2, Guideline E: | FOR APPLICANT     |
| Subparagraph 2.a:         | For Applicant     |
| Subparagraph 2.b:         | For Applicant     |

### **Conclusions**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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THOMAS M. CREAN  
Administrative Judge